

**Appendix 1 to  
First Amendment of  
Master Services Agreement**

DIR-TSS-MSA-435  
July 14, 2020

**State of Texas**  
**Department of Information Resources**



**Exhibit 2**

**Financial Provisions and Pricing**

**Technology Solution Services**

**DIR-TSS-MSA-435**

**July 14, 2020**

Contract Change Log			
CCR No.	Amendment No.	Date	Description of Changes
CCR-000XXX	Amendment 1	July 14, 2020	<ul style="list-style-type: none"> <li>Title Page updated to include DIR Logo, date of update; reformatted to be consistent with title pages for other contract documents;</li> <li>Added Contract Change Log;</li> <li>Added RU definition in Section 4.1.4 for Optional Services: Cloud Assessment, inadvertently not included in final agreement.</li> </ul>

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## 1. Introduction

- (a) The following documents comprise the entire Financial Provisions and Pricing for the Technology Solution Services Request for Offer (RFO):
  - (i) **Exhibit 2 Financial Provisions and Pricing**
  - (ii) **Attachment 2.1 Pricing and Volumes**
  - (iii) **Attachment 2.2 Financial Responsibility Matrix**
- (b) This Exhibit contains the methodology and requirements for calculating and billing the Charges for all Services. **Attachment 2.1 Pricing and Volumes** includes the Respondent's submitted pricing.
- (c) All capitalized terms in this **Exhibit 2 Financial Provisions and Pricing** shall have the same meaning given them in **Exhibit 1 Statement of Work**. All **Exhibit 2 Financial Provisions and Pricing** documents hereto are incorporated by reference.
- (d) Respondent is responsible for the accuracy and completeness of the operational and financial assumptions underlying its pricing. All pricing assumptions should be included in **Attachment 2.1 Pricing and Volumes "Assumptions" tab**. If no assumptions are specified, then Department of Information Resources (DIR) will assume there are none. DIR requires that all assumptions be eliminated prior to contract execution. The execution of the contract may be withheld until all assumptions are eliminated. DIR's contractual arrangements with a Respondent shall not be subject to assumption verification or post-closing diligence. Accordingly, Respondent shall minimize their assumptions and seek to eliminate all assumptions during the proposal and due diligence period. Respondent shall not be entitled to adjust its pricing or any other terms of the Agreement due to incorrect, incomplete, unresolved or undocumented assumptions on the part of the Respondent.
- (e) All Charges calculated in accordance with these provisions shall be invoiced to DIR through the Multi-sourcing Services Integrator (MSI) Information Technology Financial Management (ITFM) platform by the Successful Respondent in accordance with the applicable invoice and payment provisions set forth in Section 2 below. The Respondent shall not impose any fixed or monthly required minimum fees or support level pricing for any Service or at the total contract level; in no event will DIR be required to pay Respondent for Services not consumed or utilized by DIR.
- (f) All Charges are expressed and shall be paid in U.S. Dollars.

## 2. Financial Provisions

### 2.1. Fees

#### 2.1.1. General

##### 2.1.1.1. Payment of Charges

In consideration of Successful Respondent's performance of the Services and in accordance with Chapter 2251, Texas Government Code, DIR shall pay to Successful Respondent pursuant to **Exhibit 2.1 Pricing and Volumes**. Successful Respondent shall pay any relevant subcontractors the appropriate share of such payments from DIR not later than the 10th day after the day Successful Respondent receives payment from DIR. Successful Respondent shall ensure that its subcontractors pay their suppliers the appropriate share of their payment from Successful Respondent not later than the 10th day after Successful Respondent pays the subcontractor.

##### 2.1.1.2. DIR Cost Recovery Component

The DIR cost recovery component is included in the fees charged by DIR to each DIR Customer for the Services, which include the Charges plus a DIR cost recovery component as authorized in Chapter 2054.380, Texas Government Code. Such cost recovery components may change over time and DIR will provide Successful Respondent with thirty (30) days advance notice of a change in the cost recovery components. DIR shall bill for such cost recovery components and collect same from the DIR Customers. Successful Respondent consents to DIR retaining its cost recovery component from amounts collected from DIR Customers for Services sold hereunder. Successful Respondent acknowledges that DIR is its billing agent for all Services.

#### 2.1.1.3. No Additional Charges

Unless expressly set forth in this Agreement or in **Exhibit 2 Financial Provisions** as a responsibility of DIR, there shall be no charges, fees, expenses, or other amounts payable to Successful Respondent for the provision of Services. Any costs incurred by Successful Respondent prior to the Commencement Date are included in the Charges and are not to be separately paid or reimbursed by DIR.

#### 2.1.1.4. Incidental Expenses

- (a) Successful Respondent acknowledges that, except as expressly provided otherwise in this Agreement, expenses that Successful Respondent incurs in performing the Services (including management, travel and lodging, document reproduction and shipping, equipment, software required by Successful Respondent Personnel, and long-distance telephone) are included in the Charges set forth in **Attachment 2.1 Pricing and Volumes**. Accordingly, such Successful Respondent expenses shall not be separately chargeable or reimbursed by.
- (b) Other expenses incurred by the Successful Respondent, including taxes, shipping, packing, postal expenses, and moving expenses, are the financial responsibility of the Successful Respondent and are not separately chargeable or reimbursable.

#### 2.1.1.5. No Charge for Reperformance

At no additional cost or expense to DIR and the DIR Customers, Successful Respondent shall reperform (including, subject to **MSA Section 6.5**, any required backup or restoration of data from scheduled backups or, if not available on such backups, restoration by other means with DIR's reasonable cooperation) any Services that result in incorrect outputs or that are not correctly performed due to an error or breach of this Agreement by Successful Respondent, and the resources required for such performance shall not be counted in calculating the Charges payable or resources utilized by DIR and the DIR Customers hereunder and Successful Respondent shall be solely responsible for any additional Pass-Through Expenses and other costs and expenses incurred by DIR and the DIR Customers in connection with such performance.

#### 2.1.1.6. Efforts to Minimize

Successful Respondent shall continually seek to identify methods of reducing and minimizing DIR's and the DIR Customers' total cost of receiving the Services (including the amount of Pass-Through Expenses and Retained Expenses) and shall notify DIR of such methods and the estimated potential savings associated with each such method.

### 2.1.2. Taxes

Pursuant to Section 151.309, Texas Tax Code, DIR and the DIR Customers that constitute State agencies pursuant to Section 2054.003, Texas Government Code, are exempt from the assessment of State taxes. The DIR Customers that do not constitute State agencies pursuant to Section 2054.003, Texas Government Code, may also be exempt from the assessment of State taxes. In addition, DIR and the DIR Customers are exempt from federal taxes pursuant to 26 United States Code, Sections 4253 (i) and (j). Successful Respondent shall not include any taxes in the Charges except as expressly provided in this Section. Without limiting the generality of the foregoing, Successful Respondent's responsibilities in connection with taxes arising under or in connection with this Agreement include the following obligations:

#### 2.1.2.1. Income Taxes

Successful Respondent shall be responsible for its own Income Taxes.

#### 2.1.2.2. Sales, Use and Property Taxes

Successful Respondent shall be responsible for any sales, lease, use, personal property, stamp, duty, or other such taxes on Equipment, Materials or property it owns or leases or licenses from a third party, including any lease or license assigned pursuant to this Agreement.

#### 2.1.2.3. Taxes on Goods or Services Used by Successful Respondent

Successful Respondent shall be responsible for all sales, service, value-added, lease, use, personal property, excise, consumption, and other taxes and duties payable by Successful Respondent on any goods or services used or consumed by Successful Respondent in providing the Services where the tax is imposed on Successful Respondent's acquisition or use of such goods or services and the amount of tax is measured by Successful Respondent's costs in acquiring or procuring such goods or services and not by DIR's or any DIR Customer's cost of acquiring such goods or services from Successful Respondent.

#### 2.1.2.4. Service Taxes

- (a) Subject to items (2) and (3) below, Successful Respondent shall be financially responsible for all Service Taxes; provided that DIR shall be responsible for any such tax imposed on the Services after the Effective Date.
- (b) Notwithstanding item (1) above, if Service Taxes imposed on the Services after the Effective Date (whether new or higher) are the result of Successful Respondent moving all or part of its operations to a different jurisdiction (e.g., relocating the performance of the Services to a new service location or Successful Respondent using an Affiliate or Subcontractor to perform all or part of the Services), Successful Respondent shall be financially responsible for such new or higher Service Taxes.
- (c) Notwithstanding items (1) and (2) above, if DIR shall become responsible for Service Taxes after the Effective Date (whether new or higher), the Parties shall identify and diligently seek to agree upon legally permissible means of minimizing such new or higher Service Taxes. If the financial impact of all such new or higher Service Taxes exceeds six percent (6%) of the then-current annual Charges, DIR may elect to terminate this Agreement in its entirety or to terminate any portions impacted by such new or higher Service Taxes (unless Successful Respondent agrees to assume financial responsibility for such new or higher Service Taxes exceeding the six percent (6%) threshold).
- (d) To the extent required under applicable Laws, Successful Respondent shall invoice DIR for any such Service Taxes and then credit DIR on such invoice (to the extent permitted by law) or reimburse or otherwise credit DIR, for that portion of such Service Taxes for which Successful Respondent is financially responsible under this provision.

#### 2.1.2.5. Withholding

Any withholding tax or other tax of any kind that DIR or any DIR Customer is required by applicable Law to withhold and pay on behalf of Successful Respondent with respect to amounts payable to Successful Respondent under this Agreement shall be deducted from said amount prior to remittance to Successful Respondent. DIR shall provide to Successful Respondent reasonable assistance, which shall include the provision of documentation as required by revenue authorities, to enable Successful Respondent to claim exemption from or obtain a repayment of such withheld taxes and shall, upon request, provide Successful Respondent with a copy of the withholding tax certificate.

#### 2.1.2.6. Tax Filings

Successful Respondent represents, warrants, and covenants that it shall file appropriate tax returns, and pay applicable taxes owed arising from or related to the provision of the Services in all applicable jurisdictions. At DIR's request, Successful Respondent shall provide DIR with (i) written confirmation that Successful Respondent has filed all required tax forms and returns and has collected and remitted all applicable amounts, and (ii) such other information pertaining to applicable Taxes as DIR may reasonably request.

### 2.1.3. New Services

#### 2.1.3.1. Procedures

- (a) If DIR requests that Successful Respondent perform any New Services not provided for in the scope of this RFO, but reasonably related to the Services or other services generally provided by Successful Respondent, Successful Respondent shall promptly prepare a New Services proposal for DIR's consideration. Unless otherwise agreed by the Parties, Successful Respondent shall prepare such New Services proposal at no additional charge to DIR and shall deliver such proposal to DIR within ten (10) days of its receipt of DIR's request; provided that Successful Respondent shall respond more quickly in the case of a pressing need or an emergency situation. DIR shall provide such information as Successful Respondent reasonably requests in order to prepare such New Service proposal. Such New Services proposal shall include, among other things, the following at a level of detail sufficient to permit DIR to make an informed business decision: (i) a project plan and fixed price or price estimate for the New Service; (ii) a breakdown of such price or estimate; (iii) a description of the service levels to be associated with such New Service; (iv) a schedule for commencing and completing the New Service; (v) a description of the new hardware or software to be provided by Successful Respondent in connection with the New Service; (vi) a description of the software, hardware and other resources, including Resource Unit utilization, necessary to provide the New Service; (vii) any additional facilities or labor resources to be provided by DIR or the DIR Customers in connection with the proposed New Service; (viii) any risks associated with the New Service and/or the integration of the New Service into the existing environment; and (ix) in the case of any Developed Materials to be created through the provision of the proposed New Services, any ownership rights therein that differ from the provisions of **MSA Section 7.2 Developed Materials**. The Designated DIR Representative may accept or reject proposals for New Services in his or her sole discretion. Unless the Parties otherwise agree, if the Designated DIR Representative accepts Successful Respondent's proposal, Successful Respondent shall perform the New Services and be paid in accordance with the proposal submitted by Successful Respondent and the provisions of this Agreement. Upon the Designated DIR Representative's acceptance of a Successful Respondent's proposal for New Services, the scope of the Services shall be expanded and this Agreement shall be modified to include such New Services without the need for further action by the Parties.
- (b) If Successful Respondent is unable to provide such New Services using its own resources (including resources it procures through a supplier or Subcontractor), DIR may require Successful Respondent to engage (as Successful Respondent's subcontractor) a third party approved or selected by DIR to provide such services. Notwithstanding any provision to the contrary, (A) Successful Respondent shall act reasonably and in good faith in formulating such pricing proposal, (B) Successful Respondent shall use commercially reasonable efforts to identify potential means of reducing the cost to DIR, including utilizing subcontractors as and to the extent appropriate, (C) such pricing proposal shall be no less favorable to DIR than the pricing and labor rates set forth herein for comparable Services, and (D) such pricing proposal shall take into account the existing and future volume of business between DIR and Successful Respondent.

#### 2.1.3.2. Services Evolution and Modification

The Parties anticipate that, as referenced in **MSA Section 4.1** the Services shall evolve and be supplemented, modified, enhanced or replaced over time to keep pace with technological advancements and improvements in the methods of delivering Services and changes in the operations of DIR and the DIR Customers. The Parties acknowledge and agree these changes shall modify the Services and shall not be deemed to result in New Services unless the changed services meet the definition of New Services.



### 2.1.3.3. Authorized User and DIR Customer Requests

Successful Respondent shall promptly inform the Designated DIR Representative of requests for New Services from Authorized Users or DIR Customers and shall submit any proposals for New Services to the Designated DIR Representative. Successful Respondent shall not agree to provide New Services to DIR, any Authorized Users or any DIR Customers without the prior approval of the Designated DIR Representative. Without limiting DIR's other rights under this Agreement or applicable Law, if Successful Respondent fails to comply strictly with this Section, it shall receive no compensation for any services rendered to any person or Entity in violation of this Section.

### 2.1.4. Extraordinary Events

#### 2.1.4.1. Definition

As used in this Agreement, an "**Extraordinary Event**" means a circumstance in which an event or discrete set of events has occurred or is planned with respect to the operations of DIR or the DIR Customers that results or shall result in a change in the scope, nature or volume of the Services that DIR or the DIR Customers shall require from Successful Respondent. Examples of the kinds of events that might cause such substantial increases or decreases include the following:

- (i) changes in locations where the DIR Customers operate;
- (ii) changes in constituencies served by, or activities or operations of, the DIR Customers;
- (iii) privatizations, dispositions, or reorganizations of the DIR Customers;
- (iv) changes in the method of service delivery;
- (v) changes in the applicable regulatory environment or applicable Laws;
- (vi) changes in DIR's or a DIR Customer's policy, technology or processes.

#### 2.1.4.2. Consequence

If an Extraordinary Event occurs, DIR may, at its option, request more favorable pricing with respect to applicable Charges for any functional service area specified in **Attachment 2.1 Pricing and Volumes** in accordance with the following:

- (i) Successful Respondent and DIR shall mutually determine on a reasonable basis the efficiencies, economies, savings and resource utilization reductions, if any, resulting from such Extraordinary Event and, upon DIR's approval, Successful Respondent shall then proceed to implement such efficiencies, economies, savings, and resource utilization reductions as quickly as practicable and in accordance with the agreed upon schedule. As the efficiencies, economies, savings or resource utilization reductions are realized, the Charges specified in **Attachment 2.1 Pricing and Volumes** shall be promptly and equitably adjusted to pass through to DIR the net benefit of such efficiencies, economies, savings, and resource utilization reductions; provided, that DIR shall reimburse Successful Respondent for any net costs or expenses incurred to realize such efficiencies, economies, savings, or resource utilization reductions if and to the extent Successful Respondent: (i) notifies DIR of such additional costs and obtains DIR's approval prior to incurring such costs, (ii) uses commercially reasonable efforts to identify and consider practical alternatives, and reasonably determines that there is no other more practical or cost-effective way to obtain such savings without incurring such expenses, and (iii) uses commercially reasonable efforts to minimize the additional costs to be reimbursed by DIR.
- (ii) An Extraordinary Event shall not result in Charges to DIR being higher than such Charges would have been if the rates and charges then specified in **Attachment 2.1 Pricing and Volumes** had been applied. DIR may, at its sole option, elect, for each Extraordinary Event, at any time to forego its rights under this Section and instead, apply rates and charges specified in **Attachment 2.1 Pricing and Volumes** to adjust the Charges.

### 2.1.5. Unanticipated Change

If an Unanticipated Change occurs, and if DIR requests any modifications to the Services to incorporate such Unanticipated Change, the Parties shall use **MSA Section 4.9 Change Control** procedures to equitably adjust the Charges and other relevant provisions of this Agreement to take such Unanticipated Change into account. An "Unanticipated Change" shall consist of a material change in the technologies and/or processes available to provide all or any portion of the Services which is outside the normal evolution of technology experienced by the Services, that was not generally available as of the Effective Date and that would materially reduce Successful Respondent's cost of providing the Services.

### 2.1.6. Refundable Items

#### 2.1.6.1. Paid Amounts

Where DIR and/or the DIR Customers have paid for a service, function, or item for which Successful Respondent is assuming financial responsibility under this Agreement, Successful Respondent shall promptly refund to DIR or such DIR Customer, upon either Party identifying the payment, that portion of such paid expense which is attributable to periods after Successful Respondent's assumption of financial responsibility.

#### 2.1.6.2. Refunds and Credits

If Successful Respondent should receive a refund, credit, discount, or other rebate for goods or services paid for by DIR and/or the DIR Customers on a Pass-Through Expense, retained expense, cost-plus or cost-reimbursement basis, then Successful Respondent shall (i) notify DIR of such refund, credit, discount or rebate and (ii) pay the full amount of such refund, credit, discount, or rebate to DIR or such DIR Customer.

## 2.2. Invoicing and Payment

### 2.2.1. Invoicing

#### 2.2.1.1. Invoice

After the Commencement Date, and within five (5) DIR Business Days after the end of each month in which Services are provided thereafter, Successful Respondent shall meet with the MSI and DIR to review any preliminary Charges and Resource Unit (RU) volumes that Successful Respondent expects to include in the monthly feed to the MSI by Data Center Services (DCS) Customer (and any other specified breakdown) together with the resulting monthly extended charges calculated by the MSI for on-billing to DCS Customers. Successful Respondent shall provide variance explanations for Resource Unit dollar and volume fluctuations based on the thresholds established by and at the level of detail required by DIR.

(a) Invoicing feeds will be in a format provided by the MSI and approved by DIR. Each Monthly billing feed shall:

- (i) comply with all applicable legal, regulatory, and accounting requirements, including Chapter 2251, Texas Government Code,
- (ii) allow DIR and the DIR Customer to validate volumes and Charges, and
- (iii) comply with DIR's and each DIR Customer's accounting and billing requirements, including providing sufficient detail for each DCS Customer (project code or subaccount) to allocate costs to all federal and State programs in accordance with the relative benefits received and to make federal claims according to the federal cost plan of such DCS Customer.

(b) Within ten (10) DIR Business Days after the end of each month, Successful Respondent shall present DIR with an invoice (the "**Monthly Invoice**") through the ITFM for all Charges due and owing for the preceding month. Each invoice shall include the related data utilized to establish the Charges and sufficient information to validate the service volumes and other Charges.

- (c) The Monthly Invoice to DIR will include Successful Respondent name, data of invoice, service period, and the DIR purchase order number or other pertinent information for verification of receipt of the Services by the Customer, as agreed upon by the Parties for providing Chargeback Services and must provide detailed and customized information as requested.
- (i) Invoices will be supported by the Chargeback detail, as described in the Service Management Manual (SMM) and Section [2.3 Chargeback](#) below.
  - (ii) Invoices will be paid by Electronic Funds Transfer (EFT), unless DIR chooses to pay by a different method.
  - (iii) Charges will be expressed, invoiced and paid in U.S. Dollars.
  - (iv) Charges will be invoiced in arrears. (no advance or concurrent charges).
  - (v) Invoices shall not include any taxes. (see Section [2.1.2 Taxes](#)).
- (d) SCPs shall participate in independently verify and validate (IV&V) activities coordinated by the MSI and approved by DIR. DIR may also require the Successful Respondent to utilize a designated measurement tool, approved by DIR, in the invoicing or Chargeback process, at no additional cost to DIR, if IV&V results determine the existing measurement or tracking tools do not consistently perform accurately or otherwise in accordance with the requirements of this **Exhibit 2 Financial Provisions and Pricing**. Any tool changes and/or processes proposed by Successful Respondent require prior DIR Acceptance, which DIR may withhold in its sole discretion.

#### 2.2.1.2. Credits

To the extent a Service Level Credit, Deliverable Credit, or other credit may be due to DIR pursuant to this Agreement, Successful Respondent shall provide DIR with an appropriate credit against amounts then due and owing. If no further payments are due to Successful Respondent, Successful Respondent shall pay such amounts to DIR within thirty (30) days of the date such amounts become due and owing.

#### 2.2.1.3. Time Limitation

Unless otherwise requested by Successful Respondent in advance, and agreed by DIR in its sole discretion, if Successful Respondent fails to provide an invoice to DIR for any amount within four (4) invoice cycles (i.e., issuance of invoices) of the month in which the Services in question are rendered or the expense incurred, or such other period designated by DIR, Successful Respondent shall waive any right it may otherwise have to invoice for and collect such amount.

#### 2.2.2. Payment Due

Subject to the other provisions of this Exhibit, each Monthly Invoice provided for under Section [2.1.1 General](#) and other amounts due under this Agreement shall be due and payable by DIR under and in accordance with Chapter 2251, Texas Government Code.

#### 2.2.3. Set Off

Subject to Section [2.1.5 Unanticipated Change](#), DIR may set off against any and all amounts to be paid or reimbursed by DIR any amount that Successful Respondent is obligated to pay DIR hereunder, provided that DIR notifies Successful Respondent in writing of the amounts of, and the basis for, such set off.

#### 2.2.4. Disputed Charges

##### 2.2.4.1. Disputed Amounts

- (a) DIR may withhold any amount of any invoice in dispute as provided in and in accordance with Chapter 2251, Texas Government Code. DIR shall comply with Chapter 2251, Texas Government Code, with respect to timely notice of such disputed amounts.

- (b) For invoice amounts that have been paid by DIR that become the subject of a dispute, in addition to any amounts that Successful Respondent may subsequently credit to DIR arising from resolution of such dispute, Successful Respondent shall include interest on the reimbursed amounts accrued monthly at the rate specified by the Texas Comptroller of Public Accounts in accordance with Section 2251.025(b), Texas Government Code, calculated from the ninetieth (90th) day following the date of DIR's dispute.

#### 2.2.4.2. No Waiver

Neither the failure to dispute any Charges or amounts prior to payment nor the failure to withhold any amount shall constitute, operate or be construed as a waiver of any right DIR may otherwise have to dispute any Charge or amount or recover any amount previously paid.

#### 2.2.4.3. Prompt Resolution

In the event DIR initiates a dispute in accordance with the Service Management Manual related to a Monthly Invoice (a "**DIR-Initiated Financial Dispute**"), Successful Respondent will promptly respond to the issue raised in such dispute, which response will include a written explanation of the charges that are the subject of the DIR-Initiated Financial Dispute, as well as any supporting documentation necessary to support Successful Respondent's position. If within one hundred eighty (180) days of the date on which DIR notifies Successful Respondent of the DIR-Initiated Financial Dispute, Successful Respondent has either (i) failed to respond to DIR, or (ii) failed to provide documentation or other evidence as to the validity of the disputed charges, then such dispute will be deemed resolved in favor of DIR and the appropriate credits will be processed and the matter will be closed.

### 2.3. Chargeback

- (a) The MSI is responsible for developing, managing, and maintaining the DCS Invoicing and Chargeback System as well as developing and coordinating the associated processes for Service Component Providers (SCPs), as described in **Exhibit 1, Section 10.10.3, IT Financial Management**. The SCPs are responsible for data collection, data integrity, and providing data feeds to the MSI for SCP Invoicing and DIR Customer Chargeback purposes.
- (b) The MSI manages the Chargeback unit rate development process in coordination with DIR. DIR provides the methodology but the MSI develops the calculations and maintains the process, which includes the allocation of some, or all, of a SCP's charges into another SCP's Charges for Chargeback purposes.
- (c) At a minimum the SCP data feeds shall provide detailed billing data by DIR Customer, DIR Customer account identifier, by cost center, by DIR Customer use code, by Project, by RU, by program (Federal or otherwise), by Service Component, and by such other factors as requested by DIR required for chargeback, including the ability to track usage by major Application and Authorized User. SCPs are required to provide Hardware Service Charge (HSC) and Software Service Charge (SSC) chargeback information mapped to server instances for chargeback purposes.
- (d) The MSI is the financial intermediary between the SCPs and DIR. In this role, the MSI provides and manages the Chargeback and Utilization Tracking System, Chargeback and utilization reporting, Chargeback invoice consolidation, and management of the Invoice Dispute process as outlined in the SMM. A component of the Chargeback invoice consolidation responsibility is the reconciliation of the cumulative total of SCPs' Monthly Invoices with the cumulative total of the DIR Customers' Chargeback invoices. The MSI provides DIR with the supporting detail necessary to facilitate DIR's payment of the Monthly Invoice to each SCP.
- (e) For Charges that are billable on a Resource Unit basis, unique HSCs and unique SSCs, Milestone charges, Pass-through Expenses, New Services, and other services for which Successful Respondent is authorized to charge separately by DIR, the Successful Respondent provides data to the MSI to support the Charges by DIR Customer and DIR Customer account identifier.

- (f) Chargeback detail for each DIR Customer should be made available in the chargeback system and on the Portal in a format that aligns with MSI feed requirements.
- (g) DIR is responsible for providing SCPs with the factors to track, as well as the methodology to be used to indicate usage among such factors. The MSI provides detailed billing information, including the current Contract Year and the previous two (2) Contract Years' data available online in a database that lends itself to searching, ad hoc reporting, and the ability to export data. The MSI archives billing detail beyond this time period and make available upon request. The SCPs detailed billing data supporting the billing feeds.
- (h) The Successful Respondent develops and implement changes to comply with Office of Management and Budget (OMB) Guidance for Grants and Agreements (Title 2, Subtitle A, CFR 200) based upon chargeback requirements provided by DIR. The chargeback unit rate methodologies may be adjusted as necessary to meet federal approval or to better facilitate effective and efficient charging of the Services to DIR and DIR Customers. It is anticipated the chargeback methodologies generally fall into four (4) categories:
  - (i) For most billable RUs, the chargeback methodology distributes charges to the benefiting DIR Customers and programs based upon proportionate usage of actual monthly consumption. This approach requires that appropriate utilization data be captured for each of these RUs and used to distribute charges to the benefiting programs identified by each DIR Customer.
  - (ii) For certain billable Charges, such as Transition and Transformation Project Charges, it may not be possible to determine utilization attributable to specific DIR Customers. In this case, the charges associated with each milestone are to be billed in one lump sum and then distributed to the DIR Customers in the following manner, as directed by DIR.
    - A. Charges directly attributable to a DIR Customer should be allocated to that DIR Customer.
    - B. Charges not attributable to a specific DIR Customer should be allocated using certain cost data from the prior month.
  - (iii) Server related charges should be allocated based on each DIR Customer's Server Central Processing Unit (CPU) and Gigabyte related costs.
  - (iv) Finally, charges which cannot be attributable solely to a DIR Customer or as a Server related cost should be allocated based on each DIR Customer's total costs as a proportion of the total costs for DIR Customers.
- (i) The MSI allocates the Angelo State University (ASU) Charges as instructed by DIR.

#### 2.4. Financial Planning and Forecasting

- (a) The Successful Respondent shall provide the MSI with a semi-annual forecast of Charges and usage trends by Charge Category and Resource Unit Category (aligned with the State's fiscal year) as described in SMM. The Charges forecast must be inclusive of all Charge Categories and anticipated New Services. The forecast must include all known and expected changes captured as part of the Technology Plan and capacity planning and the data captured from project activities and requests. Such forecasts shall be delivered by the Successful Respondent to the MSI and DIR on the following schedule:
  - (i) In even-numbered years, the Financial Forecast is delivered on February 1 and October 1. The February 1 Financial Forecast includes updated forecasts for the current biennium and projections for the next biennium.
  - (ii) In odd-numbered years, the Financial Forecast is be delivered on April 1 and October 1.

- (b) The Successful Respondent shall provide DIR through the MSI ITFM a historical view of actual billed Charges and RU volumes per month as set forth in a standard report delivered through the Portal - the form and substance to be provided by the MSI and approved by DIR within sixty (60) days after the Effective Date. This report shall provide an eighteen (18) month rolling view of billed Services and RU volumes for the eighteen (18) months immediately prior to the month in which such report is provided.

## 2.5. Contract Performance Incentives

- (a) The Successful Respondent shall have the option throughout the term of this Agreement to propose initiatives to DIR that create value in areas that are not already identified and required in the Agreement. These Contract Performance Incentives (CPIs) are intended to incent Successful Respondent performance beyond the requirements of the Agreement, including but not limited to significant improvement in Key Performance Indicators (KPIs) described in **Exhibit 1**. CPIs are outcomes-based performance incentives that are designed to reward innovation investments that create value that is shared between the Successful Respondent and the state. As an example, the Successful Respondent may consider investing in a consumption management program designed to optimize Customer Shared Service spend that creates value beyond the cost of the initiative.
- (b) DIR may identify a business objective and solicit the Successful Respondent for a CPI initiative proposal or the Successful Respondent may independently approach DIR with a proposed CPI initiative. In either scenario, the Successful Respondent will develop a CPI proposal that includes the following:
  - (i) Objective and quantified outcome;
  - (ii) Acceptance criteria defining measure of success;
  - (iii) Detailed description of initiative and solution;
  - (iv) Business model, including:
    - A. Successful Respondent investment amount and description;
    - B. Total value created and proposed sharing of value between Successful Respondent and DIR; and
    - C. Assumption and dependencies.
- (c) DIR has the option to accept, propose changes to, or reject the proposed CPI initiative. DIR does not anticipate funding the CPI initiative but rather sharing the value that is created with the Successful Respondent. This value sharing may take the form of monetary compensation or contract term extension, depending on the nature and size of the value created. All approved CPI initiatives will be documented with a Work Order that describes the business model terms and acceptance criteria in detail.

## 2.6. Buyout of Incumbent Provider

- (a) To preserve business continuity and integrity of critical systems in connection with the performance of the Services, the Successful Respondent may acquire the hardware and software assets used by the Incumbent Provider as required to provide Services.
- (b) Any acquisition cost will be the fair market value of the assets (Hardware and Software and related maintenance contracts) proposed by the Incumbent Provider. During Transition, DIR may engage a third-party to validate the proposed fair market value if DIR and the Incumbent Provider are unable to reach an agreeable value. The Successful Respondent will invoice the approved amount determined to be the fair market value for the retained assets as a Transition Milestone.

## 2.7. Option to Extend

The Successful Respondent agrees that DIR may require continued performance, not including termination assistance, beyond the initial or any renewal Contract term, of any of the within described services at the rates



specified in the Contract. The rates for the Contract Year immediately prior to the extension period shall be used to determine the Charges during the extension period. This option may be exercised more than once, but the total extension of performance hereunder shall not exceed four (4) calendar months or December 31, of the then-ending Contract Term year, whichever is later. Such extension of services shall be subject to the requirements of the Contract, with the sole and limited exception that the original date of termination shall be extended pursuant to this provision. DIR may exercise this option upon thirty (30) calendar days written notice to the Successful Respondent.

### 3. Charges

#### 3.1. Categories

- (a) The Charges for Successful Respondent Services for each Contract Year are set forth in **Attachment 2.1 Pricing and Volumes** and reflect the resources required to provide Successful Respondent Services. There are four (4) Successful Respondent Services Charge Categories that fully compensate Successful Respondent for providing Services:
  - (i) **Resource Unit Charges** are for steady-state run services. There are two (2) types of Resource Unit Charges:
    - A. **Variable Charges:** Calculated by multiplying the applicable Unit Rate from **Attachment 2.1 Pricing and Volumes** for the related contract month by the quantity of corresponding RUs actually consumed by each DIR Customer during the applicable Billing Month.
    - B. **Fixed Charges** encompass Services with static cost structures, even during times of growth or recession. These Charges are not subject to change based on volume of service consumption.
  - (ii) **Milestone Charges** are fixed charges for Services paid upon delivery and DIR's Acceptance of the applicable Milestones. There are two (2) types of Milestone Charges:
    - A. **Transition Charges** are for Transition Service Milestones completed and accepted. DIR will pay Transition Charges for Milestones completed prior to Commencement Date as part of the first Monthly Invoice to DIR after Commencement.
    - B. **Project Charges** are for future Projects not currently anticipated that must be agreed between DIR or the DIR Customer and the Successful Respondent and require an approved solution proposal priced using the Rate Card Rates set forth in **Attachment 2.1 Pricing and Volumes**. Project Charges will be billed on a fixed milestone basis.
  - (iii) **Rate Card Charges** compensate Successful Respondent for staff augmentation services using the Rate Card Rates set forth in **Attachment 2.1 Pricing and Volumes**; and
  - (iv) **Pass-Through Expenses** are for Successful Respondent expenses that DIR has agreed to pay directly to a Third Party or reimburse to Successful Respondent.
- (b) **Exhibit 2 Financial Provisions** is not intended to fully describe each Service in detail but rather how the Services are charged, with **Exhibit 1 Statement of Work**, providing a description of the Services and a description of the expected performance, and the Successful Respondent solution document providing a description of how Successful Respondent intends to deliver the Services, including the required people, processes, and tools included in the Charges. **Exhibit 2.2 Financial Responsibility Matrix** provides guidance with respect to the financial responsibilities of the Successful Respondent and DIR.
- (c) The Successful Respondent shall invoice DIR on a monthly basis in accordance with Section [2.2 Invoicing and Payment](#). Unit Rate Charges may change on a monthly basis based on the methodology for calculating Charges. The Successful Respondent shall invoice DIR for Milestone Charges upon completion of Milestones but no sooner than the first month following the Commencement Date.

### 3.2. Changes to Charges

DIR may from time to time and on a prospective basis (e.g., based on information provided by the Successful Respondent in response to DIR request for analysis for savings opportunities, transformation services or to reflect advancements or changes in technology and the related changes in functionality and relative performance) add or remove Charge Categories and Resource Unit Categories. DIR may also from time to time and on a prospective basis, by giving a least thirty (30) days' notice to the Successful Respondent (or such shorter period as may be required by applicable Laws), reallocate the account management, cross functional, and other allocated portions of the Charges from one Resource Unit Category to another Resource Unit Category, in each case for purposes of re-allocating the pricing under this Agreement without changes in the scope provided that, in any such event, the aggregate Monthly Charges for all Charges shall not be increased because of such re-allocation. Appropriate adjustments will be made on a prospective basis to reduce the existing or new Charges, as applicable, to reflect advancements or changes in technology and related changes in functionality and relative performance. If DIR adds or removes a Charge Category or Resource Unit Category, the Parties shall agree on the Charges components applicable thereto and on corresponding adjustments to the remaining Charges. Notwithstanding the foregoing, to the extent any of the foregoing changes are required by federal funding requirements or applicable Laws, the Successful Respondent will implement such changes in a timely manner and as soon as practicable, but in no event more than ninety (90) days from receipt of notice from DIR, and implementation of such changes shall be at no cost to DIR. Successful Respondent acknowledges and agrees that the Charges, as adjusted pursuant to this Exhibit, fully compensate Successful Respondent for providing the Services.

### 3.3. Billing Month

The monthly billing period ("Billing Month") is from the first day of the calendar month through the last day of the same calendar month. If the Commencement Date of Service or any New Service occurs on a day later than the first day of a calendar month, then the first Billing Month shall be the period from the Commencement Date through the last day of such calendar month, and in that case, any amounts payable on a monthly basis shall be prorated for such month based upon the actual number of days from the Commencement Date to the end of such month. In the event of Termination, if the Termination Date occurs on a day prior to the last day of a calendar month, then the last Billing Month shall be the period from the first calendar day of the month of Termination through the Termination Date. Any amounts payable on a monthly basis shall be prorated for such month based upon the actual number of days from the first calendar day of the month of Termination to the Termination Date.

### 3.4. Resource Unit Charges

#### 3.4.1. General

Resource Unit Charges consist of Variable and Fixed Charges. The Variable Charges pricing methodology utilizes Resource Units defined in Article [4 Resource Unit Definitions](#) with Charges calculated from the Unit Rates provided in **Attachment 2.1 Pricing and Volumes**. The monthly Variable Charges shall be calculated by multiplying the applicable Unit Rate for the applicable Contract Year by the quantity of corresponding Resource Units actually consumed during the applicable Billing Month. Fixed Charges are static and billed on a monthly basis as documented in **Attachment 2.1 Pricing and Volumes**.

#### 3.4.2. Resource Unit Measurement Methodology

- (a) In managing the provision of Services, the Successful Respondent shall maintain the flexibility to respond to changes in DIR Customers' demand for the Services on a day-to-day and month-to-month basis, particularly as to those portions of the Services where DIR Customers experience significant variations in demand. Unless otherwise provided in the Agreement, if the provision of the Services requires increased dedicated support, additional resources, or extended hours of service, the Successful Respondent shall provide such support, resources, or extended hours of service at no



additional charge to DIR Customers. The Parties may jointly agree in writing to provide Resource Unit discounts for Customers with existing Equipment.

- (b) Resource Unit usage is measured on a monthly basis to determine DIR Customers' actual consumption for calculation of Charges. Starting on the Commencement Date and monthly thereafter, Successful Respondent will measure, track and report usage of Resource Units. Unless otherwise expressly stated herein with respect to an RU, Successful Respondent will measure and determine as of the last day of each calendar month the RU volume used in determining Unit Rate Charges for such month. The Successful Respondent will develop, with DIR, billing triggers to determine the criteria to initiate or stop billing a Resource Unit volume. These billing triggers will be documented in the Service Management Manual and, at a minimum, summarize all information related to calculation of Charges for each Resource Unit Category, including billing start trigger, billing stop trigger, system of record, CMDB billing query, and exclusions.
- (c) Prior to the Commencement Date, DIR and the Successful Respondent will review the measurement tools and processes for RU measurement, as well as resulting data, to ensure that such tools and processes are appropriate, accurate, producing consistent data, and reaching all devices that are to be measured. Any automated system used by the Successful Respondent to perform invoicing and billing responsibility will be configured to track and record all user entries, reports, modifications, and all other actions taken in relation to the billing source data. Subject to the audit provisions of the Agreement, DIR or its designee may, at any time, perform an audit. In coordination with the MSI, the Successful Respondent will document in the SMM the tools, methodologies and processes used to measure, track and report RU usage. This documentation will be completed prior to Commencement Date and subsequently maintained as necessary when changes occur. The method and tools for measuring, tracking and reporting Resource Units is subject to DIR written approval.
- (d) Successful Respondent will record all billable RU consumption amounts and feed the information through the MSI ITFM platform. The MSI applies the contractual rates and pricing for final billing to the applicable DIR Customer per **Section 2.3 Chargeback**.
- (e) The Resource Unit Charges shall fully compensate the Successful Respondent for providing the applicable Services at the actual usage levels for each Resource Unit in a given month. In no event will DIR or DIR Customers be required to pay Successful Respondent for volumes not consumed by DIR or DIR Customers.

### 3.5. Milestone Charges

#### 3.5.1. General

Milestone Charges consist of Transition Charges and Project Charges. Milestone Charges shall only be chargeable to DIR upon DIR's acceptance in writing of the applicable Milestone. Milestone Charges shall be itemized on the applicable Monthly Invoice feed to the MSI in a level of detail approved by DIR.

#### 3.5.2. Transition Charges

DIR will pay Transition Milestones completed and accepted prior to Commencement Date as part of the first Monthly Invoice to DIR after Commencement. Transition Charges will be itemized on the applicable Monthly Invoices to DIR in sufficient detail to delineate the specific nature of the Charges. The invoice will clearly identify each Transition Charges (i.e., the relevant Transition Milestone with which it is associated). Unless otherwise agreed, DIR shall not incur any charges, fees, or expenses payable to Successful Respondent or any third party engaged by the Successful Respondent in connection with the Transition Services, other than those charges, fees and expenses specified in **Attachment 2.1 Pricing and Volumes**.

### 3.5.3. Request for Solution (RFS) Project Payment Based Milestones

- (a) Payment Based Milestone Charges apply to certain projects that may arise from a DIR or DIR Customer Request for Solution (RFS) as described in **Exhibit 1 SOW**. RFS Project Based Milestones are to be used on discrete units of work that do not recur on a regular or periodic basis and has each of the following characteristics:
  - (i) A defined start and end date;
  - (ii) Requested and approved by DIR or DCS Customers;
  - (iii) Not an inherent, necessary or customary part of the day-to-day (i.e. regular, not daily) Services;
  - (iv) Not required by Successful Respondent to meet the existing Service Levels;
  - (v) Not otherwise part of the Services to be provided within the Monthly Base Charge; and
  - (vi) Requires more than eight (8) hours of effort (excluding hours for Project management of the work).
- (b) Successful Respondent and Customers shall agree to the RFS Project Payment Based Milestones as part of the Form of Work Order. The Form of Work Order must be agreed between DIR or the DIR Customer and the Successful Respondent and require an approved solution proposal leveraging Project Bench resources and priced using the Rate Card rates set forth in **Attachment 2.1 Pricing and Volumes**. The Payment Based Milestones shall be associated with defined Deliverables that align with completion of specified RFS project phases or interim Deliverables that are measurable and acceptable to the Customer.
- (c) If Successful Respondent fails to successfully complete any Payment Based Milestone by the date specified in the Service Proposal, the Customer shall not be required to pay any portion of the Charges associated with the Payment Based Milestone unless, and until, the successful completion of that Payment Based Milestone is approved by the Customer. The Successful Respondent and Customers agree the Milestone Amount shall reflect the accrued, but not yet invoiced Successful Respondent Charges incurred in performing the RFS project related to the Payment Based Milestone.
- (d) After any given Payment Based Milestone has been successfully completed by Successful Respondent, and approved by the Customer, Successful Respondent may invoice the Customer for the Payment Based Milestone amount. Successful Respondent shall not invoice the Customer for any amounts other than the Payment Based Milestone amount.

### 3.6. Rate Card Services

#### 3.6.1. General

- (a) DIR Customers may, at their sole discretion, request Rate Card Services delivered utilizing the **Attachment 2.1 Pricing and Volumes** Rate Card rates and the labor categories and skill sets. Rate Card Services are billable on a Monthly Productive Hours Worked basis under the following guidelines:
  - (i) For each Rate Card resource that performs Monthly Productive Hours Worked in a given month, Successful Respondent shall invoice DIR Customers at the applicable rate in **Attachment 2.1 Pricing and Volumes**, which is inclusive of all travel expenses.
  - (ii) Successful Respondent shall not invoice Customers in any given month for more than the maximum number of Monthly Productive Hours Worked which will be calculated by multiplying the number of DIR Business Days in the month by eight (8) hours, unless overtime is approved by the DIR Customer, which is to be paid at the same rate as Monthly Productive Hours Worked.
  - (iii) Successful Respondent shall not invoice DIR Customers for Rate Card Resource overtime, unless agreed to in advance, in writing and on an exception basis by the DIR Customer.
  - (iv) DIR Customers shall not incur any Rate Card Charges for the following activities:
    - A. Services performed by Successful Respondent Personnel that have not been approved, in advance, by DIR Customers per established approval processes;

- B. Services performed by Successful Respondent Personnel providing non-Rate Card Services;
- C. Project scoping, solutioning, and proposal activities;
- D. Time expended by Successful Respondent Personnel to remedy Successful Respondent performance failure;
- E. Nonproductive time (whether or not conducted on DIR Customers' Sites), such as holidays, vacation time, sick leave, time spent consuming meals, or other personal time; and
- F. Time used for education, training, mentoring, travel, administrative or management (for example: Successful Respondent internal meetings, internal reporting, process implementation work, time and expense accounting, performance reviews, knowledge transfer, etc.).

(b) The Charges for the Successful Respondent Personnel performing Rate Card Services shall be calculated as the product of:

- (i) Rates set forth in **Attachment 2.1 Pricing and Volumes**; and
- (ii) the number of Productive Hours the Successful Respondent's Personnel devoted to providing such approved Services during such month.

### 3.7. Pass-Through Expenses

#### 3.7.1. Procurement

Upon DIR's request, Successful Respondent shall procure products and services on DIR's or a DIR Customer's behalf by (1) purchasing the products and services on behalf of DIR, (2) leasing, or arranging for a third party to lease, such products to DIR, or (3) licensing, or arrange for a third party to license, such products to DIR. DIR shall pay directly to Successful Respondent, the supplier, third party lessor, or third party licensor, as agreed by the Parties, the purchase, lease, or license fees, as applicable, in respect of products and services procured on behalf of DIR or any DIR Customer on a Pass-Through Expense basis in accordance with this Section. Unless otherwise expressly set forth in the Agreement, Successful Respondent will not add any mark-up or margin to the costs of such items procured on DIR's behalf. Except as otherwise agreed by the Parties or as otherwise provided in this Agreement, (i) all rights in and title to any products purchased by Successful Respondent on behalf of DIR or a DIR Customer shall belong to DIR or the relevant DIR Customer, as applicable, and (ii) all products shall be new. Successful Respondent shall adhere to the applicable product and services standards specified by DIR or set forth in the Service Management Manual and shall not deviate from such standards without DIR's prior approval. To the extent an authorized DIR representative specifies the third party vendor, pricing and/or other terms and conditions for procuring products or services on behalf of DIR or any DIR Customer, Successful Respondent shall not deviate from such instructions without DIR's prior approval.

#### 3.7.2. Paid by DIR Directly

If the Parties agree that any Pass-Through Expenses are to be paid by DIR directly, Successful Respondent shall arrange that the Pass-Through Expenses are invoiced by the third party directly to DIR, and timely provided to DIR together with any documentation required by DIR to support such invoiced charges. Before any such third party invoices are submitted to DIR for payment, Successful Respondent shall review the invoiced charges and communicate with the applicable third party to correct any errors in such invoices in a timely manner and otherwise in accordance with the applicable provisions of the Service Management Manual. DIR shall pay such invoices in accordance with Chapter 2251, Texas Government Code.

#### 3.7.3. Paid by Successful Respondent

If the Parties agree that any Pass-Through Expenses are to be paid by Successful Respondent directly, Successful Respondent shall pay the third party invoices containing such Pass-Through Expenses on behalf of DIR. Prior to making any such payment, however, Successful Respondent shall review the invoiced charges and communicate with the applicable third party to correct any errors in such invoices in a timely manner and shall provide DIR with a reasonable opportunity to review

such invoices to confirm that the third party charges are proper and valid. Following such review by Successful Respondent and DIR, Successful Respondent shall pay the amounts due and shall invoice DIR for such charges.

#### 3.7.4. Generally

The Successful Respondent shall administer and invoice DIR for Pass-Through Expenses identified in **Exhibit 2.1 Pricing and Volumes** in accordance with this Section and pursuant to the applicable procedures in the Service Management Manual (SMM). No new Pass-Through Expenses may be added without DIR's prior consent, which DIR may withhold in its sole discretion. For all products or services paid for on a Pass-Through Expenses basis, DIR reserves the right to (i) obtain such products or services directly from a third party, (ii) designate the third party source for such products or services, (iii) designate the particular products or services that Successful Respondent shall obtain (provided that if Successful Respondent demonstrates to DIR that such designation shall have an adverse impact on Successful Respondent's ability to meet the Service Levels, such designation shall be subject to Successful Respondent's approval), (iv) require Successful Respondent to identify and consider multiple sources for such products or services or to conduct a competitive procurement, and (v) review and approve the Pass-Through Expense for such products or services before entering into a contract for such products or services. In addition, for all products and services paid for on a Pass-Through Expense basis, Successful Respondent shall use commercially available efforts to pass through, or otherwise provide, to DIR and/or the applicable DIR Customer(s) all benefits offered by the manufacturers and/or vendors of such products and services (including all warranties, refunds, credits, rebates, discounts, training, technical support, and other consideration offered by such manufacturers and vendors) except to the extent otherwise agreed by DIR. If Successful Respondent is unable to pass through any such benefit to DIR and/or the applicable DIR Customer(s), it shall notify DIR in advance and shall not purchase such product or service without DIR's prior approval.

#### 3.8. Equipment

The Successful Respondent is responsible for all equipment used in or for the provision of the Services, including the support, maintenance, purchase or lease costs of the assets, and refresh of that equipment.

### 4. Resource Unit Definitions

This Section sets forth the definitions for the Resource Units. RUs will be measured in accordance with Section [3.4.2 Resource Unit Measurement Methodology](#) above.

#### 4.1. Solution Services

##### 4.1.1. Strategy Management Services

The Successful Respondent shall charge a fixed fee for Strategy Management Services. The Strategy Management Services Fixed Fee for each Contract Year will be set forth in **Exhibit 2.1 Pricing and Volumes**. The Fixed Fee shall fully compensate Successful Respondent for providing Strategy Management Services. Unless otherwise provided in the Agreement, if the Services requires increased dedicated support, additional resources, or extended hours of service, Successful Respondent shall provide such support, resources, or extended hours of service at no additional Charge.

##### 4.1.2. Customer Technical Architecture Services

The Successful Respondent shall charge a fixed fee for Customer Technical Architecture Services. The Customer Technical Architecture Services Fixed Fee for each Contract Year will be set forth in **Exhibit 2.1 Pricing and Volumes**. The Fixed Fee shall fully compensate Successful Respondent for providing Customer Technical Architecture Services. Unless otherwise provided in the Agreement, if the Services requires increased dedicated support, additional resources, or extended hours of service, Successful Respondent shall provide such support, resources, or extended hours of service at no additional Charge.

#### 4.1.3. Optional Services: Modernization Consulting

Modernization Consulting is an optional service that may be procured by DIR Customers on a project basis. Modernization Consulting includes the Services described in **Exhibit 1 SOW, Section 3.8**. The charging methodology for Modernization Consulting will be based on Section [3.5.3 Request for Solution \(RFS\) Project Payment Based Milestones](#).

#### 4.1.4. Optional Services: Cloud Assessment

Cloud Assessments are an optional service that may be procured by DIR Customers, and the Services are described in **Exhibit 1 SOW, Section 3.1.2.1**. The charging methodology is a unit rate for each instance assessed.

#### 4.1.5. Solution Request Management

Solution Request and Delivery Services are provided on a fixed charge basis per request based on complexity as described in **Exhibit 1 SOW Sections 3.2.1 and 3.2.2** and in compliance with **Attachment 2.2 Financial Responsibility Matrix**. The Parties will agree upon the proper complexity type based upon the characteristics that most closely align with the Request. There are two (2) categories of solution requests (Single-SCP and Multi-SCP) and four (4) complexity levels for each category, each with a separate fixed unit rate. Solution Request Management Services for Services provided by the Successful Respondent are not billable.

#### 4.1.6. Project Management

For the solutions developed by TSS and approved by the Customer, the Successful Respondent shall provide project management for the implementation of the projects. The charging methodology for Project Management will be based on Section [3.5.3 Request for Solution \(RFS\) Project Payment Based Milestones](#).

### 4.2. Application Development and Maintenance

#### 4.2.1. Application Development, Testing, and Implementation Services

##### 4.2.1.1. Application Development Services Fixed Fee

Application Development Services shall be completed by Successful Respondent for Fixed Fee Payment Based Milestones or Sprints. DIR Customers have the option to pay Successful Respondent using either Milestones or Sprints. At no additional cost, the Successful Respondent shall provide DIR with an ADS cost estimate in accordance with a **Form of Work Order** and in alignment with the Services described in **Exhibit 1 Technology Solution Services Statement of Work**. Upon DIR approval, Work Orders will be added to **Exhibit 2.1 Pricing and Volumes**.

Service proposals shall be approved by Customers prior to work commencing. Any work performed prior to Customer approval shall be the Successful Respondent's financial responsibility. Successful Respondent shall not charge Customers more than the Customer-approved Service Proposal without first obtaining Customer's approval according to the process defined in the SMM.

##### 4.2.1.2. Application Development Services Payment Based Milestone Payments

- (a) Successful Respondent and Customers shall agree to the ADS Payment Based Milestones as part of the **Form of Work Order**. The Payment Based Milestones shall be associated with defined Deliverables that align with completion of specified ADS phases or interim Deliverables that are measurable and acceptable to the Customer.
- (b) If Successful Respondent fails to successfully complete any Payment Based Milestone by the date specified in the Service Proposal, the Customer shall not be required to pay any portion of the Charges associated with the Payment Based Milestone unless, and until, the successful completion of that Payment Based Milestone is approved by the

Customer. The Successful Respondent and Customers agree the Milestone Amount shall reflect the accrued, but not yet invoiced Successful Respondent Charges incurred in performing the ADS related to the Payment Based Milestone.

- (c) After any given Payment Based Milestone has been successfully completed by Successful Respondent, and approved by the Customer, Successful Respondent may invoice the Customer for the Payment Based Milestone amount specifically as adjusted by the ADS Final Payment Percentage described in Section [4.2.1.3](#). Successful Respondent shall not invoice the Customer for any amounts other than the Payment Based Milestone amount.

#### 4.2.1.3. Application Development Services Final Payment

Customers shall retain the sum calculated by applying the ADS Final Payment Percentage of 10% to each accepted Payment Based Milestone amount (“**ADS Final Payment**”).

- (i) Provided the Successful Respondent has rectified all Severity 1 and 2 defects, the ADS Final Payment shall become payable upon on the sooner of i) final Payment Based Milestone acceptance and the Application’s Warranty Period expiration; or ii) forty-five (45) days from last Payment Based Milestone acceptance.
- (ii) If any Severity 1 or 2 defects are outstanding, Customers may retain the ADS Final Payment until such time the defect is resolved, at which time Customers must pay the ADS Final Payment, less any costs or expenses incurred for any third party to perform the Successful Respondent obligations in relation to the defect, including any legal costs incurred in resolving the defect, whether such costs are incurred in to ensure the Successful Respondent performs its obligations or to engage a third party to do so, in accordance with the Agreement.

#### 4.2.1.4. Application Development Services Sprint Pricing

- (a) DIR Customers may elect to engage with Respondent in an Agile software development process and pay for Services on a fixed price per sprint basis. The sprint team is comprised of eight FTEs, including both dedicated and shared resources. Each scrum role is aligned to a rate card role and the fixed price per sprint is calculated based on hours per sprint multiplied by the rate for the aligned roles. The following table provides a typical sprint team overview and serves as the basis for the Cost Plan calculation in ServiceNow.

Rate Card Category	Scrum Roles	Weekly Hours
Onsite Senior Manager	1 Scrum Master/ Manager	40
Onsite Senior Business Systems Analyst	Senior Business Analyst/Tester	40
Onsite Test Analyst	Business Analyst/Tester	40
Onsite Web Security Administrator	Security Tester	10
Onsite Web Software Developer	Developers	140
Onsite Database Administrator	Database administrator	10
Onsite Infrastructure Architect	Infrastructure Analyst	10
Onsite Application Architect	Application Architect	30
<b>Total</b>		<b>320</b>



- (b) Sprint teams will deliver no fewer than thirteen (13) story points per week on average per project. Successful Respondent has committed to improve the sprint productivity during the Term. A sprint team's velocity will improve over time.

#### 4.2.1.5. Application Development Services Termination Charges

In the event a Service Proposal is terminated, a Customer shall pay all amounts due for Services performed by the Successful Respondent and ultimately accepted by the Customer, including any pending payments in accordance with Section [2.2 Invoicing and Payment](#).

### 4.2.2. Application Maintenance Services (AMS)

#### 4.2.2.1. Application Maintenance Services Fixed Fee

- (a) Successful Respondent shall charge an annual fixed fee for the provision of all Application Maintenance Services. The AMS Fixed Fee for each Contract Year will be set forth in **Exhibit 2.1 Pricing and Volumes**, and the labor component of the AMS Fixed Fee will be based on **Exhibit 2.1 Pricing and Volumes Rate Card**.
- (b) The AMS Fixed Fee, as adjusted pursuant to this Exhibit, shall fully compensate Successful Respondent for providing AMS, including the Third Party Software Acceptance activities, for the Applications as set forth in the Application Maintenance tab in **Attachment 2.1 Pricing and Volumes**. Unless otherwise provided in the Agreement, if the Services requires increased dedicated support, additional resources, or extended hours of service, Successful Respondent shall provide such support, resources, or extended hours of service at no additional Charge.
- (c) Successful Respondent shall invoice on a monthly basis in accordance with Article [2 Financial Provisions](#) for a pro rata portion of the AMS Fixed Fee, which shall be calculated by dividing the AMS Fixed Fee specified in **Exhibit 2.1 Pricing and Volumes** for the applicable Contract Year by the number of months in that Contract Year the Successful Respondent is providing Services.
- (d) Specifically excluded from AMS are Major Enhancements which shall be charged as Application Development Services. Minor Enhancements are included in the AMS Fixed Fee.

#### 4.2.2.2. Initial AMS Baseline

In the event a Customer onboards more than one application receiving AMS support, then during the three (3) months following the Commencement Date, Successful Respondent shall complete an AMS hourly support baseline per Application ("AMS Baseline"). The AMS Baseline and skill level labor category of resources will be used to allocate the AMS Fixed Fee proportionately to each Application ("Proportional AMS Application Fee"). For example, if ten percent (10%) of all AMS effort is spent supporting Application A, then ten percent (10%) of the AMS Fixed Fee would be associated with Application A.

#### 4.2.2.3. Productivity Improvements

Successful Respondent has committed to improve the AMS productivity during the Term. The AMS Fixed Fee must include year-on-year reductions related to the AMS productivity improvements.

#### 4.2.2.4. Application Removal

If an Application is removed from the Supported Applications List, the AMS Fixed Fee will be reduced by the Proportional AMS Application Fee applicable to that Application and shall be reflected in the first monthly invoice following retirement.

#### 4.2.2.5. Application Addition

- (a) If an Application is added to the Supported Applications List ("**New Application**"), the Successful Respondent shall provide DIR with an AMS cost estimate in accordance with a **Form of Work Order** of the Master Services Agreement and in alignment with the Services described in **Exhibit 1 Technology Solution Services Statement of Work**.

(b) The AMS Fixed Fee adjustment shall be determined in accordance with the following subsections:

- (i) Such AMS Fixed Fee adjustment shall be based on a blended rate that is consistent with the rate applied to other similar, if applicable, Applications under AMS support.
- (ii) For the development of new, custom application software, the post-production maintenance costs will be agreed upon prior to beginning new application development so that DIR understands the total cost of ownership for that application before approving its development.
- (iii) With respect to a New Application developed by the Respondent as part of ADS, the New Application AMS Fixed Fee adjustment shall not exceed 15% of the New Application ADS effort, inclusive of the original ADS Monthly Productive Hours Worked plus any approved ADS project change request, multiplied by the appropriate AMS Rate Card rates in effect at that time.
- (iv) Maintenance for the support of COTS packages, exclusive of supporting manpower, will be passed through to DIR at the COTS vendor's maintenance rate for the application itself plus the standard Pass-Through Charge.

(c) The New Application AMS price must include year-on-year productivity improvement reductions equal to the productivity improvements of the current Application Portfolio.

#### 4.2.2.6. Application Changes

If an Application on the Supported Application List is changed because of ADS, or if the AMS requirements associated with an Application change, the Proportional AMS Application Fee may be adjusted as agreed by the Parties based on the scope of the change, as long as the anticipated AMS change is identified at the time the ADS or other development work is initially authorized. A Proportional AMS Application Fee change shall not negatively impact the year-on year productivity commitments in Section [4.2.2.3 Productivity Improvements](#).

#### 4.2.3. Staff Augmentation Services

Section [3.6 Rate Card Services](#) describes the charging methodology for Staff Augmentation Services.

#### 4.2.4. Resource Roles and Rates

- (a) **Attachment 2.3 Skill Set Definitions** provides a description of the Labor Categories and Resource Roles therein. Successful Respondent shall use these Labor Categories and Resources Roles along with the related Rates in developing all Solution Proposals and cost estimates. Cost estimates should be developed using Full Time Equivalent productivity, which equates to a level of effort, excluding vacation, holidays, training, administrative and other non-productive time (but including a reasonable amount of additional work outside normal business hours), equivalent to that which would be provided by one person working full time for one year. Unless otherwise agreed, one FTE is assumed to be 1,920 productive hours per year. Pricing for services provided under this Contract are inclusive of any travel expenses that may be incurred in the performance of those services.
- (b) Customers shall not incur any Resource Charges for project scoping, solutioning and proposal activities.

#### 4.2.5. Software (SSC)

If requested by the Customer, the Charges shall include application software, application software maintenance or application software as a service procured by the Successful Respondent pursuant to the Software Charge methodology below and utilized by Successful Respondent in the provision of the Services. SSC/SaaS shall be based on the application software expenditures paid or incurred by Successful Respondent. Successful Respondent will use commercially reasonable efforts to obtain the lowest possible discounted prices for such application software for the benefit of Customer, including utilization of DIR purchase arrangements in accordance with the Agreement. Notwithstanding anything to the contrary herein, (a) Customer shall have the option of procuring such application software directly from Third Parties; (b) Customer shall pay upon delivery of



such application software, maintenance or software as a service and on the payment schedule agreed to in a Demand or Solution Request at cost; and (c) Customer shall have the option of procuring such application software directly from Successful Respondent under this Agreement only to the extent Customer obtains Successful Respondent's support of such application software pursuant to the terms of this Agreement (except to the extent otherwise mutually agreed).

#### 4.3. Business Analytics and Reporting (BAR)

##### 4.3.1. BAR Services

DIR Customers may elect to engage with Respondent for BAR ideation, analytics, and support as described in **Exhibit 1 SOW, Section 4.2**. The pricing for this optional service will be determined and agreed upon by the Parties.